IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.371 OF 2004

Ambaji Dhaku Bodekar .. Appellant.
Vs.
Balkrishna Bhikaji Kumbhar & Anr. .. Respondents.

Mr.A.S.Khandeparkar for the appellant.
Mr.R.R.Rege i/b Ms.Leena Sawant for respondent nos.1 and 2.

CORAM : D.B.BHOSALE, J.

DATED : 31ST JANUARY, 2007

P.C.:

. Heard learned counsel for the parties.

2. Admit. By consent of the learned counsel for the parties the appeal is taken up for final hearing forthwith. Mr.Rege, learned counsel waives service for respondent nos.1 and 2.

3. This appeal by the plaintiff is directed against a part of the judgment rendered by the appeal court dated 15.11.2003 by which the appeal court has set aside the judgment of the trial Court only to the extent of granting perpetual injunction restraining the respondent from interfering with his possession of the suit property. Admittedly, from perusal of the judgment of the courts below, it is clear that they

have concurrently held that the plaintiff is owner of the suit property bearing Survey No.36, Hissa No.2-D admeasuring 1 hectare 16 Ares plus Pot Kharaba 84 Ares, that is, 2 hectare of land in all. The courts have also concurrently held that the plaintiff is in possession of the suit property. The trial Court had granted injunction restraining the defendants from obstructing or interfering the plaintiff's possession over the suit land. There is no dispute that the suit land was allotted to the plaintiff under Sanad dated 26.7.1985. Considering the findings recorded by the courts below on the issue of possession and ownership as aforestated, Mr.Khandeparkar, learned counsel for the appellant submitted that the appeal court was not justified in refusing to grant injunction after confirming the findings of the trial Court on all other issues. He submitted that he has instructions to make the statement that the plaintiff shall restrict their right over the suit property only, that is, survey no.36, Hissa No.2-D admeasuring 2 hectares including Pot Kharaba and he shall not claim any right whatsoever over any other portion of survey no.36 or its other Hissas. Mr.Rege, learned counsel for respondent nos.1 and 2 also fairly stated that insofar as the suit property is concerned respondent nos.1 and 2 shall not disturb the possession of the plaintiff. The statements of both the learned counsel are

accepted. If there is any difficulty in identifying the boundaries of the suit property it is always open for the appellant to take out execution and get boundaries fixed to avoid an encroachment by either of the parties over their lands. With these observations the appeal stands allowed in aforesaid terms. No orders as to costs.

(D.B.Bhosale, J.)